

**Jim Causley Pontiac, Division Jim Causely, Inc. and
John P. Wittbrodt. Case 7-CA-13577**

September 8, 1982

**SECOND SUPPLEMENTAL DECISION
AND ORDER**

**BY MEMBERS FANNING, JENKINS, AND
ZIMMERMAN**

On December 12, 1980, the National Labor Relations Board issued a Supplemental Decision and Order¹ in this proceeding in which it reaffirmed its original Decision and Order in its entirety.² Thereafter, Respondent petitioned the United States Court of Appeals for the Sixth Circuit to have the Board's Order set aside, and the General Counsel cross-appealed for enforcement of the Order. The court once again denied enforcement of the Board's Order and remanded the case, ruling that the Board applied the wrong standard in determining whether Respondent had knowledge of the concerted nature of Wittbrodt's conduct.³

The Board, having accepted the remand, respectively recognizes the court's opinion as binding for the purpose of deciding this case.

On May 21, 1982, the Board notified the parties that it had decided to accept the remand and invited each party to file a statement of position. Pursuant to this notice, Respondent and the General Counsel filed statements.⁴

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the Na-

tional Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record as a whole, the decision of the United States Court of Appeals for the Sixth Circuit remanding the proceeding, and the statement of position filed by each party.

As indicated above, the remand to the Board is for the limited purpose of determining whether Respondent knew of the concertedness of Wittbrodt's activities. Respondent contends in substance that there is insufficient record evidence upon which to base such a finding. On the other hand, the General Counsel asserts that it is unnecessary to reopen the record for further testimony, and urges the Board to find on the basis of the record as it now exists that Respondent knew of the concerted nature of Wittbrodt's conduct.

Based on our review of the entire case, we find that it is reasonable to infer that at the time of Wittbrodt's discharge Respondent knew that Wittbrodt's activities were concerted in nature, and not merely the product of individual action. As set forth in our earlier Supplemental Decision and Order, the MIOSHA complaint form received by Respondent included the statement "[W]e are having headaches every day from working here." In this connection, Respondent admitted in its original brief in support of its exceptions to the Administrative Law Judge's Decision that the use of the pronoun "we" in the complaint form indicated "*more than one complainant*." Furthermore, the complaint form identified specifically the area of the shop where employees Wittbrodt and Leo Chiotti⁵ worked, listed the job descriptions of the two nonmanagement employees alleged to be exposed to the hazardous conditions, and listed paint fumes as an alleged hazard to which the employees were exposed.⁶

Based on the foregoing, we find and conclude that it is reasonable to infer from the substantial evidence herein that at the time of the discharge Respondent knew that Wittbrodt's activities were on behalf of other employees in addition to himself.

¹ 253 NLRB 695.

² As described in more detail at 253 NLRB 695, *supra*, the Board had earlier issued its Decision and Order reported at 232 NLRB 125 (1977), in which it found that Respondent violated Sec. 8(a)(1) of the Act by laying off employee John P. Wittbrodt for engaging in the protected concerted activity of complaining about working conditions and filing a complaint with the Michigan Department of Public Health, Division of Occupational Health, herein called MIOSHA. Thereafter, on April 23, 1980, the United States Court of Appeals for the Sixth Circuit remanded the case for further proceedings to determine whether Respondent knew that the activity for which it discharged Wittbrodt was concerted in nature. See *Jim Causley Pontiac v. N.L.R.B.*, 620 F.2d 122 (6th Cir. 1980). The Supplemental Decision and Order reported at 253 NLRB 695 followed from the earlier remand by the Sixth Circuit.

³ The court's decision was in an unpublished memorandum and order entered April 15, 1982.

⁴ In conjunction with Respondent's statement of position, Respondent filed a petition to reopen the hearing before the Administrative Law Judge in which it argues that a specific finding of fact as to whether Respondent knew of the concertedness of Wittbrodt's activities cannot be made on the basis of the record because the General Counsel failed to call Respondent's president, James F. Causley, to testify about his knowledge, or lack thereof, of the nature of Wittbrodt's activities. We find no merit in Respondent's contention. The General Counsel was under no affirmative obligation to call President Causley as a witness as part of the case against Respondent. Moreover, while we have not drawn an adverse inference against Respondent for failing to call Causley as its own witness, we note that Respondent was not precluded in any way from calling Causley to try to establish a lack of knowledge of concertedness on Respondent's part, but chose not to do so.

⁵ Employee Chiotti authorized Wittbrodt to use his name in the original letter of complaint which was mailed to MIOSHA.

⁶ We note that complaints by employees to Respondent with respect to excessive paint fumes were common in Respondent's facility. The record shows that during the late summer and early fall of 1976 Respondent received at least seven individual complaints about paint fumes in the body shop from at least three body shop employees. Also, Wittbrodt testified that he and two coworkers, Rice and Ross, discussed and complained to each other about excessive paint fumes and the alleged inadequacy of the shop ventilation system; and that on more than one occasion he heard Rice and Ross complain about the situation to Bert Strickroot, the body shop manager and Wittbrodt's immediate supervisor. Wittbrodt further testified that he and Rice together complained to Strickroot about the ventilation system in the body shop.

Accordingly, we reaffirm our findings, conclusions, and Order in our previous Decision and Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby reaffirms its original Decision and Order in this proceeding reported at 232 NLRB 125.